House of Representatives

File No. 1027

General Assembly

January Session, 2009

(Reprint of File Nos. 314 and 956)

Substitute House Bill No. 6097
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 30, 2009

AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 25-68d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No state agency shall undertake an activity or a critical activity within or affecting the floodplain without first obtaining an approval or approval with conditions from the commissioner of a certification submitted in accordance with subsection (b) of this section or exemption by the commissioner from such approval or approval with conditions in accordance with subsection (d) of this section.

(b) Any state agency proposing an activity or critical activity within or affecting the floodplain shall submit to the commissioner information certifying that:

(1) The proposal will not obstruct flood flows or result in an adverse increase in flood elevations, significantly affect the storage or flood control value of the floodplains, cause an adverse increase in flood

velocities, or an adverse flooding impact upon upstream, downstream or abutting properties, or pose a hazard to human life, health or property in the event of a base flood or base flood for a critical activity;

(2) The proposal complies with the provisions of the National Flood Insurance Program (44 CFR 59 et seq.), and any floodplain zoning requirements adopted by a municipality in the area of the proposal and the requirements for stream channel encroachment lines adopted pursuant to the provisions of section 22a-342;

(3) The agency has acquired, through public or private purchase or conveyance, easements and property in floodplains when the base flood or base flood for a critical activity is elevated above the increment authorized by the National Flood Insurance Program or the flood storage loss would cause adverse increases in such base flood flows;

(4) The proposal promotes long-term nonintensive floodplain uses and has utilities located to discourage floodplain development;

(5) The agency has considered and will use to the extent feasible flood-proofing techniques to protect new and existing structures and utility lines, will construct dikes, dams, channel alterations, seawalls, breakwaters or other structures only where there are no practical alternatives and will implement stormwater management practices in accordance with regulations adopted pursuant to section 25-68h; and

(6) The agency has flood forecasting and warning capabilities consistent with the system maintained by the National Weather Service and has a flood preparedness plan.

(c) The commissioner shall make a decision either approving, approving with conditions or rejecting a certification not later than ninety days after receipt of such certification, except that in the case of an exemption any decision shall be made ninety days after the close of the hearing. If a certification is rejected, the agency shall be entitled to a hearing in accordance with the provisions of sections 4-176e, 4-177, 4-

177c and 4-180.

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve, approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity. An activity shall be

considered to be in the public interest if it is a development subject to environmental remediation regulations adopted pursuant to section 22a-133k and is in or adjacent to an area identified as a regional center, neighborhood conservation area, growth area or rural community center in the State Plan of Conservation and Development pursuant to chapter 297, or (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional planning agency. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

(e) The use of a mill that is located on a brownfield, as defined in section 32-9kk, shall be exempt from the certification requirements of subdivision (4) of subsection (b) of this section, provided the agency demonstrates: (1) The activity is subject to the environmental remediation requirements of the regulations adopted pursuant to section 22a-133k, (2) the activity is limited to the areas of the property where historical mill uses occurred, (3) any critical activity is above the five hundred year flood elevation, and (4) the activity complies with the provisions of the National Flood Insurance Program.

[(e)**]** (f) The failure of any agency to comply with the provisions of this section or any regulations adopted pursuant to section 25-68c shall be grounds for revocation of the approval of the certification.

[(f)**]** (g) The provisions of this section shall not apply to any proposal by the Department of Transportation for a project within a drainage basin of less than one square mile.

Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f, **[**or**]** foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157, **[**or, provided the establishment is within the pilot program established in subsection (c) of section 32-9cc,**]** an exercise of eminent domain pursuant to section 8-128 or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield as defined in section 32-9kk or a subsequent transfer by such municipality that has foreclosed on the property, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc, or has acquired such property through the exercise of eminent domain pursuant to section 8-128 or 8-193 or by condemnation pursuant to section 32-224 or a resolution adopted in accordance with this subparagraph, provided (i) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and (ii) on or before the date the

party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x, as amended by this act, and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132;

(C) Conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f;

(D) Conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f;

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

(F) Any change in ownership approved by the Probate Court;

(G) Devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession;

(H) Corporate reorganization not substantially affecting the ownership of the establishment;

(I) The issuance of stock or other securities of an entity which owns or operates an establishment;

(J) The transfer of stock, securities or other ownership interests representing less than forty per cent of the ownership of the entity that owns or operates the establishment;

(K) Any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee;

(L) Conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more siblings, spouses, children, parents, grandchildren, children of a sibling or siblings of a parent of the transferor;

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance;

(N) Conveyance of a service station, as defined in subdivision (5) of this section;

(O) Any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed;

(P) Any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section

32-224, or to the Connecticut Development Authority or any subsidiary of the authority;

(Q) Any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as defined in section 32-651;

(R) The conversion of a general or limited partnership to a limited liability company under section 34-199;

(S) The transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(T) The transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(U) Acquisition of an establishment by any governmental or quasi-governmental condemning authority;

(V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation; or

(W) Conveyance of a unit in a residential common interest community in accordance with section 22a-134i.

Sec. 3. Section 32-9dd of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

Upon remediation as approved by the Department of Environmental Protection of the brownfield property by the municipality, **[**or**]** economic development agency **[**, the economic development agency or the municipality**]** or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, such entity may transfer the property to any person provided such a person is not otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act. The person who acquires title **[**from the municipality or economic development agency**]** pursuant to this section shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, provided that such person does not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act. In addition, the Commissioner of Environmental Protection shall also provide such person with a covenant not to sue pursuant to section 22a-133 and shall not require the prospective purchaser or owner to pay a fee. The municipality, **[**or**]** economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services,

in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 shall distribute the proceeds from any sale as follows: (1) Twenty per cent shall be retained by the municipality, **[**or**]** economic development agency, nonprofit economic development corporation or nonstock corporation or limited liability company and used for capital improvements for economic development, and (2) eighty per cent shall be transferred to the Office of Brownfield Remediation and Development and deposited in the account established pursuant to section 32-9ff.

Sec. 4. Subsection (a) of section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) **[**The**]** Any municipality, **[**or**]** economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 that receives grants through the Office of Brownfield Remediation and **[**Development's**]** Development or the Department of Economic and Community Development, including those municipalities designated by the Commissioner of Economic and Community Development as part of the pilot program established in subsection (c) of section 32-9cc for the investigation and remediation of a brownfield property shall be considered an innocent party and shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, for conditions pre-existing or existing on the brownfield property as of the date of acquisition or control as long as the municipality, **[**or**]** economic development agency or entity established under chapter 130 or 132, nonprofit economic development

corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under **[**this pilot program**]** section 22a-133k and funded by the Office of Brownfield Remediation and Development or the Department of Economic and Community Development; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, the municipality, economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 shall only be responsible for responding to contamination exacerbated by its negligent or reckless activities.

Sec. 5. Section 22a-452 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Any person, firm, corporation or municipality which contains or removes or otherwise mitigates the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes resulting from any discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste shall be entitled, subject to the conditions in this section, to reimbursement from any person, firm or corporation for the reasonable costs expended for such containment, removal, or mitigation, including any

investigation and remediation, if such oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes pollution or contamination or other emergency [resulted from the negligence or other] was directly or indirectly caused by or contributed to or exacerbated by the actions or negligent omissions of such person, firm or corporation. When such pollution or contamination or emergency results from the [joint negligence or other] actions or negligent omissions of two or more persons, firms or corporations, each shall be liable [to the others] for a pro rata share of the costs of [containing, and removing or otherwise mitigating the effects] investigation and remediation of the same and for all damage caused thereby. No person, firm or corporation shall be liable for reimbursement of costs incurred unless such person, firm or corporation received notice and the opportunity to participate in the investigation and remediation pursuant to subsection (f) of this section. No such responsible person, firm or corporation shall be required to fund any remediation above the land use that existed when the person, firm or corporation owned or operated such site. If an imminent and substantial endangerment exists at the property or arises from pollution migrating beyond the property line, the provisions of this section limiting the potentially responsible party's liability shall not apply to an action for the costs associated with the investigation and remediation of such condition. For the purposes of this subsection, "reimbursement" means the reimbursement of funds already expended or the recovery of funds to be expended, pursuant to this section, and "pro rata share" means an equitable proportionate share based upon equitable and site-specific factors, including, but not limited to, the activity conducted on the property, the duration of such activity or ownership of the property, compliance with the laws, regulations and other standards that existed at the time of ownership or operation with respect to the ownership or operation of the property, type and amount of pollution caused, and prior efforts to prevent, contain, mitigate or remediate such pollution.

(b) No person, firm, [or] corporation or municipality which renders

assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous materials, hazardous wastes or hazardous substances, other than a discharge of oil as defined in section 22a-457b, to the surface waters of the state, or [which] who assists in preventing, cleaning-up or disposing of any such discharge shall be held liable, notwithstanding any other provision of law, for any costs of investigation or remediation under this section and civil damages as a result of any act or omission by him in rendering such assistance or advice, except acts or omissions amounting to gross negligence or wilful or wanton misconduct, unless he is compensated for such assistance or advice for more than actual expenses. For the purpose of this subsection, "discharge" means spillage, uncontrolled loss, seepage or filtration and "hazardous materials" means any material or substance designated as such by any state or federal law or regulation.

(c) The immunity provided in subsection (b) of this section shall not apply to (1) any person, firm, [or] corporation or municipality responsible for such discharge, or under a duty to mitigate the effects of such discharge, (2) any agency or instrumentality of such person, firm or corporation, or (3) negligence in the operation of a motor vehicle.

(d) An action for reimbursement or recovery of the reasonable costs expected for investigation and remediation, including the reasonable costs of investigation and remediation, shall be commenced on or before the later of (1) six years after written notice was provided to the known responsible person, firm or corporation pursuant to subsection (f) of this section, or (2) three years after the completion of remediation activities, exclusive of any post-remedial or other long-term groundwater monitoring.

(e) The provisions of this section shall not apply to any action filed before July 1, 2009. A performing party who has begun incurring costs for remediation started before July 1, 2009, who may seek to recover

such costs pursuant to this section shall provide notice pursuant to subsection (f) of this section, no later than November 1, 2009.

(f) Before any person, firm or corporation files an action under this section in the Superior Court, such person, firm or corporation shall provide written notice of intent to conduct any remediation to all known potential responsible parties no later than one hundred twenty days before the commencement of such activity. Such notice shall identify the property, the potential responsible party's relationship to such site, the proposed investigation or remediation activity and its estimated cost and the date that such activity is to commence. No such notice shall be required before filing a lawsuit if an imminent and substantial endangerment exists necessitating immediate action, provided notice is made within a reasonable time after immediate action is taken. Notice provided pursuant to this subsection shall be sent certified mail, return receipt requested to any potentially responsible party at their last known address on file at the Secretary of the State's office or their agent for service of process, if any. If a private corporation is no longer on file with the Secretary of the State, notice shall be sent to the last-known address of the president or, if a partnership, to the last-known address of any of the known partners, or, if an individual, to the last-known residential address of the individual. The performing party shall provide a copy of the notice to the Office of the Attorney General and the Commissioner of Environmental Protection. When other potentially responsible parties become known to the performing party after the notice under this section is provided, the performing party shall provide notice pursuant to this subsection not later than forty-five days after the discovery of the other potentially responsible parties.

(g) Any potentially responsible party shall inform such performing party, not later than ninety days after receipt of the notice required pursuant to subsection (f) of this section, of their intent to negotiate with the performing party regarding a reasonable pro rata allocation for the investigation and remediation costs.

(h) A potentially responsible party that has exercised its right to participate and participates in the investigation and remediation of an eligible site shall be responsible solely for its pro rata share of any necessary and reasonable costs of investigation and remediation. A potentially responsible party that fails to offer and share in the costs reasonably proportionate to its pro rata share, or who fails to participate or respond to the notice provided in subsection (c) of this section shall (1) waive any right to challenge the reasonableness of investigation and remediation costs in any claim or action for reimbursement of such investigation and remediation costs; (2) pay damages to the performing party, including costs associated with any lost business opportunities; and (3) pay the performing party's attorneys fees, in the discretion of the court, and other costs of litigation, in the event the performing party prevails in its claim or action for reimbursement.

(i) In any action brought pursuant to this section, the Superior Court may issue an order granting the reimbursement or recovery of reasonable costs to be incurred in the future consistent with the pro rata share of the costs of the potential responsible party.

(j) A performing party that has failed to provide notice and opportunity to participate to any known potential responsible party shall be prohibited from seeking reimbursement of investigation and remediation costs from such potential responsible party.

(k) Nothing in this section shall relieve any potential responsible party from any liability to any third party for property damage or personal injury based upon common law.

(l) Nothing in this section shall deprive any potential responsible party from any possible defenses to any action, including, but not limited to, contribution, available by law.

(m) No eligible party shall be liable for a claim under this section for any costs or damages arising from any pollution or source of pollution on or emanating from the property that occurred or existed prior to

such eligible party taking title to such property provided the eligible party did not establish, create or contribute to a condition or facility at or on such property that reasonably can be expected to create a source of pollution and the eligible party is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such eligible party's interest in the property was conveyed or financed.

(n) For purposes of this section: (1) "Potentially responsible party" means any person, firm, corporation or municipality that is liable under this section for an act or negligent omission that directly or indirectly caused or contributed to or exacerbated the release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes; (2) "eligible party" means a person, firm, corporation or municipality that acquired the property after the pollution or source of pollution existed or occurred and such party is not otherwise responsible pursuant to section 22a-428, 22a-432, 22a-433 or 22a-451 or pursuant to transfer of ownership filing pursuant to section 22a-134, as amended by this act, or 22a-134e and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such owner's interest in the property was conveyed or financed; (3) "performing party" means the person, firm or corporation that performs an investigation and remediation or contains or removes or otherwise mitigates the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes; (4) "investigation and remediation" means assessment, investigation, containment, mitigation, removal, remediation and subsequent monitoring; (5) "remediation" means the work performed on a site that is undertaken pursuant to a remedial action plan; and (6) "municipality" shall have the same meaning as in section 22a-423, and includes any municipal economic development agency or entity

created or operating under chapter 130 or 132 and any nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company established and controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

Sec. 6. Section 22a-134b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Failure of the transferor to comply with any of the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages.

(b) An action to recover damages pursuant to subsection (a) of this section shall be commenced not later than six years after the later of (1) the due date for the filing of the appropriate transfer form pursuant to section 22a-134a, as amended by this act, or (2) the actual filing date of the appropriate transfer form.

(c) This section shall apply to any action brought for the reimbursement or recovery of costs associated with investigation and remediation, as defined in subsection (n) of section 22a-452, as amended by this act, and all direct and indirect damages, except any action that becomes final and is no longer subject to appeal on or before October 1, 2009.

Sec. 7. Section 22a-133dd of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Any municipality or any licensed environmental professional employed or retained by a municipality may enter, without liability **[**to any person other than the Commissioner of Environmental Protection,**]**

upon any property within such municipality for the purpose of performing an environmental site assessment or investigation on behalf of the municipality if: (1) The owner of such property cannot be located; (2) such property is encumbered by a lien for taxes due such municipality; (3) upon a filing of a notice of eminent domain; (4) the municipality's legislative body finds that such investigation is in the public interest to determine if the property is underutilized or should be included in any undertaking of development, redevelopment or remediation pursuant to this chapter or chapter 130, 132 or 581; or (5) any official of the municipality reasonably finds such investigation necessary to determine if such property presents a risk to the safety, health or welfare of the public or a risk to the environment. The municipality shall give at least forty-five days' notice of such entry before the first such entry by certified mail to the property owner's last known address of record.

(b) A municipality accessing or entering a property to perform an investigation pursuant to this section shall not **[**incur any liability pursuant to section 22a-432 for any preexisting contamination or pollution on such property, provided, however, a municipality may be liable for any pollution or contamination resulting from a negligent or reckless investigation**]** be liable for preexisting conditions pursuant to section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, or to the property owner or any third party, provided the municipality (1) did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution; (2) does not negligently or recklessly exacerbate the conditions; and (3) complies with reporting of significant environmental hazard requirements pursuant to section 22a-6u. To the extent that any conditions are negligently or recklessly exacerbated, the municipality shall only be responsible for responding to contamination exacerbated by its activities.

(c) The owner of the property may object to such access and entry by the municipality by filing an action in the Superior Court not later than thirty days after receipt of the notice provided pursuant to

subsection (a) of this section, provided any objection be limited to the [owner affirmatively representing that it is diligently investigating the site in a timely manner and that any municipal taxes owed will be paid in full] issue of whether access is necessary and only upon proof by the owner that the owner has (1) completed or is in the process of completing in a timely manner a comprehensive environmental site assessment or investigation report; (2) provided the party seeking access with a copy of the assessment or report or will do so not later than thirty days after the delivery of such assessment or report to the owner; and (3) paid any delinquent property taxes assessed against the property for which access is being sought.

(d) For purposes of this section, "municipality" includes any municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company established and controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

Sec. 8. (NEW) (*Effective October 1, 2009*) (a) There is established an abandoned brownfield cleanup program. The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection, properties and persons eligible for said program. For a person and a property to be eligible, the Commissioner of Economic and Community Development shall determine if (1) the property is a brownfield, as defined in section 32-9kk of the general statutes and such property has been unused or significantly underused since October 1, 1999; (2) such person intends to acquire title to such property for the purpose of redeveloping such property; (3) the redevelopment of such property has a regional or municipal economic development benefit; (4) such person did not establish or create a

facility or condition at or on such property that can reasonably be expected to create a source of pollution to the waters of the state for the purposes of section 22a-432 of the general statutes and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than a relationship by which such owner's interest in such property is to be conveyed or financed; (5) such person is not otherwise required by law, an order or consent order issued by the Commissioner of Environmental Protection or a stipulated judgment to remediate pollution on or emanating from such property; (6) the person responsible for pollution on or emanating from the property is indeterminable, is no longer in existence or is otherwise unable to perform necessary remediation of such property; and (7) the property and the person meet any other criteria said commissioner deems necessary.

(b) Upon designation by the Commissioner of Economic and Community Development of an eligible person who holds title to such property, such eligible person shall (1) enter and remain in the voluntary remediation program established in section 22a-133x of the general statutes, as amended by this act, provided such person will not be a certifying party for the property pursuant to section 22a-134 of the general statutes, as amended by this act, when acquiring such property, (2) investigate pollution on such property in accordance with prevailing standards and guidelines and remediate pollution on such property in accordance with regulations established for remediation adopted by the Commissioner of Environmental Protection and in accordance with applicable schedules; and (3) eliminate further emanation or migration of any pollution from such property. An eligible person who holds title to an eligible property designated to be in the abandoned brownfields cleanup program shall not be responsible for investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property.

(c) Any applicant seeking a designation of eligibility for a person or

a property under the abandoned brownfields cleanup program shall apply to the Commissioner of Economic and Community Development at such times and on such forms as the commissioner may prescribe.

(d) Not later than sixty days after receipt of the application, the Commissioner of Economic and Community Development shall determine if the application is complete and shall notify the applicant of such determination.

(e) Not later than ninety days after determining that the application is complete, the Commissioner of Economic and Community Development shall determine whether to include the property and applicant in the abandoned brownfields cleanup program.

(f) Designation of a property in the abandoned brownfields cleanup program by the Commissioner of Economic and Community Development shall not limit the applicant's or any other person's ability to seek funding for such property under any other brownfield grant or loan program administered by the Department of Economic and Community Development, the Connecticut Development Authority or the Department of Environmental Protection.

Sec. 9. Section 22a-134 of the general statutes is amended by adding subdivision (28) as follows (*Effective October 1, 2009*):

(NEW) (28) "Interim verification" means a written opinion by a licensed environmental professional, on a form prescribed by the commissioner, that (A) the investigation has been performed in accordance with prevailing standards and guidelines, (B) the remediation has been completed in accordance with the remediation standards, except that, for remediation standards for groundwater, the selected remedy is in operation but has not achieved the remediation standards for groundwater, (C) identifies the long-term remedy being implemented to achieve groundwater standards, the estimated duration of such remedy, and the ongoing operation and maintenance requirements for continued operation of such remedy, and (D) there

are no current exposure pathways to the groundwater area that have not yet met the remediation standards.

Sec. 10. Subdivision (1) of subsection (g) of section 22a-134a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(g) (1) (A) Except as provided in subsection (h) of this section, the certifying party to a Form III **[**or Form IV**]** shall, not later than seventy-five days after the receipt of the notice that such form is complete or such later date as may be approved in writing by the commissioner, submit a schedule for the investigation of the parcel and remediation of the establishment. Such schedule shall, unless a later date is specified in writing by the commissioner, provide that the investigation shall be completed within two years of the date of receipt of such notice, **[**and that**]** remediation shall be initiated not later than three years after the date of receipt of such notice and remediation shall be completed sufficient to support either a verification or interim verification not later than eight years after the date of such notice. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. Not later than two years after the date of the receipt of the notice that the Form III **[**or Form IV**]** is complete, unless the commissioner has specified a later day, in writing, the certifying party shall submit to the commissioner documentation, approved in writing by a licensed environmental professional and in a form prescribed by the commissioner, that the investigation has been completed in accordance with prevailing standards and guidelines. Not later than three years after the date of the receipt of the notice that the Form III **[**or Form IV**]** is complete, unless the commissioner has specified a later day in writing, the certifying party shall notify the commissioner in a form prescribed by the commissioner that the remediation has been initiated, and shall submit to the commissioner a remedial action plan approved in writing by a licensed environmental professional in a form prescribed by the commissioner. Notwithstanding any other provision of this

section, the commissioner may determine at any time that the commissioner's review and written approval is necessary and in such case shall notify the certifying party that the commissioner's review and written approval is necessary. Such certifying party shall investigate the parcel and remediate the establishment in accordance with the **[**proposed**]** schedule or the schedule specified by the commissioner. **[**When**]**

(B) For a certifying party that submitted a Form III or Form IV before October 1, 2009, when remediation of the entire establishment is complete, the certifying party shall achieve the remediation standards for the establishment sufficient to support a final verification and shall submit to the commissioner a final verification by a licensed environmental professional. For a certifying party that submits a Form III or Form IV after October 1, 2009, not later than eight years after the date of receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later date in writing, the certifying party shall achieve the remediation standards for the establishment sufficient to support a final or interim verification and shall submit to the commissioner such final or interim verification by a licensed environmental professional. Any such final verification may include and rely upon a verification for a portion of the establishment submitted pursuant to subdivision (2) of this subsection. Verifications shall be submitted on a form prescribed by the commissioner.

(C) A certifying party who submits an interim verification shall, until the remediation standards for groundwater are achieved, operate and maintain the long-term remedy for groundwater in accordance with the remedial action plan, the interim verification and any approvals by the commissioner, prevent exposure to the groundwater plume and submit annual status reports to the commissioner.

(D) The certifying party to a Form IV shall submit with the Form IV a schedule for the groundwater monitoring and recording of an environmental land use restriction, as applicable.

Sec. 11. Section 22a-133x of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) For the purposes of this section, "applicant" means the person who submits the environmental condition assessment form to the commissioner pursuant to this section. Except as provided in section 22a-133y, **[**a political subdivision of the state, an owner of an establishment, as defined in section 22a-134, an owner of property identified on the inventory of hazardous waste disposal sites maintained pursuant to section 22a-133c on October 1, 1995, or an owner of contaminated property located in an area for which the groundwater classification is GA or GAA,**]** any person may, at any time, submit to the commissioner an environmental condition assessment form for **[**such**]** real property **[**owned by such political subdivision or such owner**]** and an initial review fee in accordance with subsection (e) of this section. **[**The owner or political subdivision**]** Such applicant shall use a licensed environmental professional to verify the investigation and remediation, unless not later than thirty days after the commissioner's receipt of such form, the commissioner notifies **[**the owner or political subdivision**]** such applicant, in writing, that review and written approval of any remedial action at such **[**establishment or**]** property by the commissioner will be required. The commissioner shall not process any such form submitted pursuant to this section unless such form is accompanied by the required initial review fee.

(b) The **[**owner or political subdivision**]** applicant shall, on or before ninety days after the submission of an environmental condition assessment form, submit a statement of proposed actions for investigating and remediating the parcel or a release area, as defined in the regulations adopted by the commissioner pursuant to section 22a-133k, and a schedule for implementing such actions. The commissioner may require the **[**owner or political subdivision**]** applicant to submit to the commissioner copies of technical plans and reports related to investigation and remediation of the parcel or release area. Notwithstanding any other provision of this section, the commissioner

may determine that the commissioner's review and written approval of such technical plans and reports is necessary at any time, and in such case the commissioner shall notify the [owner or political subdivision] applicant of the need for the commissioner's review and written approval. The commissioner shall require that the certifying party submit to the commissioner all technical plans and reports related to the investigation and remediation of the parcel or release area if the commissioner receives a written request from any person for such information. The [owner or political subdivision] applicant shall advise the commissioner of any modifications to the proposed schedule. Upon receipt of a verification by a licensed environmental professional that the parcel or release area has been investigated in accordance with prevailing standards and guidelines and remediated in accordance with the remediation standards, the [owner or political subdivision] applicant shall submit such verification to the commissioner on a form prescribed by the commissioner.

(c) If the commissioner notifies the [owner or political subdivision] applicant that the commissioner will formally review and approve in writing the investigation and remediation of the parcel, the [owner or political subdivision] applicant shall, on or before thirty days of the receipt of such notice, or such later date as may be approved in writing by the commissioner, submit for the commissioner's review and written approval, a proposed schedule for: (1) Investigating and remediating the parcel or release area; and (2) submitting to the commissioner technical plans, technical reports and progress reports related to such investigation and remediation. Upon the commissioner's approval of such schedule, the [owner or political subdivision] applicant shall, in accordance with the approved schedule, submit technical plans, technical reports and progress reports to the commissioner for the commissioner's review and written approval. The [owner or political subdivision] applicant shall perform all actions identified in the approved technical plans, technical reports and progress reports in accordance with the approved schedule. The commissioner may approve, in writing, any modification proposed in

writing by the [owner or political subdivision] applicant to such schedule or investigation and remediation and may notify the [owner] applicant, in writing, if the commissioner determines that it is appropriate to discontinue formal review and approval of the investigation or remediation.

(d) If, in accordance with the provisions of this section, the commissioner has approved in writing or, as applicable, a licensed environmental professional has verified, that the parcel or release area has been remediated in accordance with the remediation standards, such approval or verification may be used as the basis for submitting a Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as amended by this act, provided there has been no additional discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste at or on the parcel subsequent to the date of the commissioner's approval or verification by a licensed environmental professional.

(e) The fee for submitting an environmental condition assessment form to the commissioner pursuant to this section shall be three thousand dollars and shall be paid at the time the environmental condition assessment form is submitted. Any fee paid pursuant to this section shall be deducted from any fee required by subsection (m) or (n) of section 22a-134e for the transfer of any parcel for which an environmental condition assessment form has been submitted within three years of such transfer.

(f) Nothing in this section shall be construed to affect or impair the voluntary site remediation process provided for in section 22a-133y.

(g) Prior to commencement of remedial action taken under this section, the [owner or political subdivision] applicant shall (1) publish notice of the remediation, in accordance with the schedule submitted pursuant to this section, in a newspaper having a substantial circulation in the area affected by the establishment, (2) notify the director of health of the municipality where the parcel is located of the remediation, and (3) either (A) erect and maintain for at least thirty

days in a legible condition a sign not less than six feet by four feet on the parcel, which sign shall be clearly visible from the public highway, and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain additional information about the remediation, or (B) mail notice of the remediation to each owner of record of property which abuts the parcel, at the last-known address of such owner on the last-completed grand list of the municipality where the parcel is located.

Sec. 12. (NEW) (*Effective October 1, 2009*) Notwithstanding any other provisions of the general statutes, whenever a state agency or quasi-public agency, as defined in section 1-120 of the general statutes, solicits bids, makes a request for proposals or negotiates a contract for the environmental remediation of a brownfield property, such bid, proposal or contract shall include a provision whereby the employment and utilization of green remediation technologies shall be accorded due consideration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	25-68d
Sec. 2	*from passage*	22a-134(1)
Sec. 3	*July 1, 2009*	32-9dd
Sec. 4	*July 1, 2009*	32-9ee(a)
Sec. 5	*July 1, 2009*	22a-452
Sec. 6	*from passage*	22a-134b
Sec. 7	*from passage*	22a-133dd
Sec. 8	*October 1, 2009*	New section
Sec. 9	*October 1, 2009*	22a-134
Sec. 10	*October 1, 2009*	22a-134a(g)(1)
Sec. 11	*October 1, 2009*	22a-133x
Sec. 12	*October 1, 2009*	New section

OFA Fiscal Note

State Impact: See below

Municipal Impact: See below

Explanation

Section 1 could result in a savings to the Department of Economic and Community Development (DECD) associated with removing the need for DECD to apply for an exemption under DEP's floodplain management statutes. It is estimated that DECD could process approximately six exemptions per year for the reuse of mills at a cost of $25,000-$50,000 per application for a total savings of $150,000-$300,000. Costs include printing, publication, staff, and attorney fees.

Section 5 could result in significant costs to municipalities to the extent that municipalities are identified as responsible parties and are ordered to pay for its share of investigation and remediation of a contaminated site, or any other related reasonable costs.

Section 7 could result in significant savings to municipalities since it states that municipalities are not liable for certain preexisting conditions and that (1) the municipality did not cause or contribute to the contamination of the site, (2) the municipality did not exacerbate the contaminated conditions, and (3) the municipality complies with certain reporting requirements.

Section 9, which establishes an abandoned brownfield cleanup program, is not anticipated to result in a fiscal impact to DECD.

Section 11 establishes a timeframe for completion of remediation. To the extent that this reduces the likelihood of contaminated sites

being abandoned by a responsible party and left to the state to perform the remediation, this could result in significant savings to the state.

The bill makes other changes which have no fiscal impact.

House "A" struck the underlying bill which resulted in fiscal impacts as described above.

The Out Years

The annualized ongoing fiscal impact described above would continue into the future subject to the future.

OLR Bill Analysis

sHB 6097 (as amended by House "A")*

AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.

SUMMARY:

This bill makes many changes affecting the regulatory framework identifying, investigating, remediating, and developing contaminated property (brownfields). It expands the protections from liability for municipalities when they take various steps to promote brownfield remediation. These steps include entering and inspecting property and acquiring and conveying it to other parties.

The bill makes it easier for parties acquiring a brownfield to recover investigation and remediation costs from those responsible for contaminating the property. It does so by reducing the criteria for obtaining recovery and establishing procedures and deadlines for starting recovery actions. The procedures include allowing the responsible parties to participate in the investigation and remediation.

The bill establishes a program protecting brownfield developers from liability for contamination that escape from a brownfield before they acquired it. The program is open to developers who agree to remediate the brownfield according to state standards. The bill also creates a regulatory mechanism allowing developers to remediate the soil and use a property while conducting long-term groundwater monitoring and remediation. It also allows any party, rather than just the owner or a municipality, to complete an environmental condition assessment form.

Lastly, the bill reduces the regulatory criteria state agencies must

meet when developing contaminated mill sites in floodplains. It also requires state agencies and quasi-public agencies to provide for the use of green remediation technologies when soliciting bids, requesting proposals, or negotiating contracts for remediating brownfields.

*House Amendment "A" establishes deadlines and procedures for recovering investigation and remediation costs, expands the range of municipal entities exempted from the transfer act, creates the flood plain exemption to mill projects, expands liability protections for parties acquiring brownfields from municipalities, extends innocent third party status to more municipal entities, and expands liability protections for municipalities inspecting contaminated property. It also adds provisions (1) specifying the local agencies and organizations allowed to acquire and convey property, (2) establishing the Abandoned Brownfield Cleanup Program, (3) authorizing interim verifications for ongoing groundwater remediation, (4) allowing any party to prepare environmental site assessment forms, and (5) authorizing state brownfield remediation contracts to provide for the use of green remediation technologies. And it eliminates provisions making Connecticut Development Authority's Tax Incremental Financing Program permanent and limiting the scope of work under a covenant not to sue.

EFFECTIVE DATE: October 1, 2009, except for the floodplains, Transfer Act, and municipal inspection provisions, which are effective upon passage, and the municipal liability protections, innocent third party status, and reimbursement provisions, which are effective July 1, 2009.

§§ 9, 10, & 11 — REMEDIATING PROPERTY UNDER THE TRANSFER ACT

The bill imposes a deadline for remediating property under the Transfer Act, which requires the parties involved in the transfer of certain property to assess its environmental condition and provide for any necessary remediation. The parties must notify the DEP commissioner about the transaction and their knowledge of the

property by submitting a "Form III." The form must also indentify the party responsible for investigating and remediation the property (i.e., certifying party). The commissioner must notify them if the form is complete. Parties must submit a "Form IV" if the contamination reported in Form III was remediated.

After the commissioner notifies the parties that the form is complete, they must submit to a schedule to her for investigating and remediating. They must finish investigating the property within two years after receiving the commissioner's notice, and begin remediating it within three years of that date. The bill additionally requires them to finish remediating the property within eight years of the commissioner's notice, unless she specified a later date. The bill specifies that the remediation must meet DEP standards. These requirement applies certifying parties submitting Form IIIs and Form IVs on or after October 1, 2009.

Current law imposes no deadline for completing the remediation but requires it to meet DEP standards. The certifying party or a licensed environmental professional acting on its behalf must verify the remediation by submitting a final verification report to the commissioner. The bill creates an alternative remediation procedure. It allows a licensed environmental professional (LEP) to certify that the soil has been remediated and that the groundwater is being remediated under a long-term remedy (i.e., interim verification).

To meet this standard, an LEP must submit a written opinion to the commissioner stating that:

1. the investigation was performed according to current standards and guidelines,

2. the property, except for the groundwater, was remediated according to DEP standards,

3. a long-term remedy for remediating the groundwater is being implemented, and

4. there is no pathway by which the polluted groundwater can escape.

The written opinion must also identify the remedy and how long it is expected to take. It must described what needs to be done to operate and maintain the remedy.

The certifying party must operate and maintain the remedy according to the remedial action plan, the interim verification report, and any approvals by the commission. It must also prevent exposure of the groundwater plume and submit annual status reports to the commissioner. A party submitting a Form IV must also submit a schedule for monitoring the groundwater and recording an environmental land use restriction, as applicable.

The certifying party must achieve the standards for interim verification within eight years of the commissioner's notice, unless she specified a later date in writing. The requirement applies to Form III and Form IVs submitted on or after October 1, 2009.

§ 5 — RECOVERING CLEANUP COSTS

Parties to Recovery Actions

The bill adds to the rules and procedures a party must follow when seeking reimbursement (recovery) for actual and anticipated cost of investigating and cleaning up pollution caused by another party. In doing, it defines the parties to a recovery action. Under current law, people, firms, corporations, and municipalities may seek recovery. The bill expands the range of parties that can recover costs and labels them "eligible parties." It adds to this group (1) economic development, redevelopment, and municipal development agencies and (2) nonprofit economic development corporations and non stock or limited liability companies acting on a municipality's behalf.

Nonprofit and non stock corporation or LLC qualifies as a municipal eligible party if they meet specific criteria. A nonprofit economic development corporation must have been formed to

promote the municipality's common good, general welfare, and economic development and receives funds or in-kind services from the municipality. A non stock corporation or LLC qualifies if it was established by the municipality or its economic development, redevelopment, or municipal development agencies and operates under their control.

The bill appears to contemplate situations where the parties that actually investigates and remediates a property may not be an eligible party. It labels these parties the "performing party," and limits this group to people, firms, and corporations that investigate and remediate various hazardous substances or contain, remove, or mitigate them.

Lastly, the bill defines the parties from whom eligible and performing parties may seek recovery. Under current law, they can be any person, firm or corporation that contaminated the property by a negligent or other action. The bill labels this group "potentially responsible parties" and expands it to add the same municipal entities that qualify as eligible parties.

Grounds for Recovery

The bill changes the grounds for seeking recovery and establishes deadlines and procedures for doing so. Current law allows recovery only for the reasonable costs they incurred to contain, remove, or mitigate contamination. The bill also allows them to seek recover for investigation and remediation costs, which include the cost to assess the type and amount of contamination and monitor conditions on the property after it was remediated. The bill limits remediation costs to those incurred to implement the property's remedial action plan. It also allows eligible parties to seek recovery for the costs they expect to incur investigating and remediating the property as well as those they actually incurred up to when they sought recovery.

The bill broadens the grounds for seeking recovery. Current law allows recovery only for contamination caused by negligent or other

acts. The bill allows recovery for acts or negligent omissions that directly or indirectly caused, contributed to, or exacerbated the contamination.

The bill applies the same criteria when an eligible party seeks recovery from two or more potentially responsible parties. Under current law, these parties are liable only for their pro rata share of containing, removing, or otherwise mitigating the contamination. The bill limits their liability to their pro rata share of the investigation and remediation costs. It requires these shares to be based on equitable and site-specific factors, including:

1. all the things done to the property;

2. the time it takes to do these things or the property's ownership;

3. compliance with the laws, regulations, and other standards that existed when the responsible party owned or operated the property;

4. the type and amount of pollution that was caused during that time; and

5. prior efforts to prevent, contain, mitigate, or remediate the property.

Liability Protections for Eligible, Responsible, and Assisting Parties

Eligible Parties. The bill protects these parties from liability for damages or claims arising from any pollution or pollution source that existed or emanated from the property before they acquired or took control over it. The bill protects these parties only if they:

1. did not establish or create a condition or facility on the property that could reasonably be expected to create a pollution source and

2. are not affiliated with anyone responsible for the pollution or

pollution source through any direct or indirect familial, contractual, corporate, or financial relationship other than one formed to transfer or convey the property.

Potentially Responsible Parties. These parties are liable for their pro rata share of reasonable and necessary investigation and remediation costs. The bill authorizes the Superior Court to order these parties to pay these costs.

As discussed below, the bill requires an eligible party to notify all known potentially responsible parties before it starts investigating and remediating a property. If the eligible party fails to do so, the potentially responsible parties are not liable for recovery costs. But the bill exempts the eligible party from giving this advance notice when they must immediately investigate and remediate an imminent and substantial danger or one that arises from polluting spreading beyond the property's boundaries. In these cases, the potentially responsible parties are liable for the recovery costs.

The bill exempts potentially responsible parties from paying the extra cost an eligible party incurs when he or she plans to convert a contaminated mill or warehouse into homes or apartments.

Assisting Parties. The bill expands the current liability protections for parties that help mitigate pollution (i.e., assisting parties). Current law protects people, firms, and corporations from liability for civil damages for any act or omission except gross negligence or willful misconduct when they only receive compensation for their actual expenses. The bill extends this protection to any cost an eligible or performing party incurs to investigate or remediate the pollution.

The bill extends the protection to municipalities that also help mitigate pollution. The protection applies to their development agencies, and nonprofit corporations and non stock or limited liabilities companies acting on the municipalities' behalf. It also extends the protection to assisting parties that help mitigate the discharge or prevent the potential discharge of hazardous wastes or

substances. Under current law, the protection applies only to oil; petroleum; chemical liquids; or solid, liquid, or gaseous products or hazardous materials.

The law does not extend these liability protections to situations where the assisting party or a related organization is helping to mitigate pollution it caused. Nor does it extend them to situations involving the negligent use of a motor vehicle. The bill similarly does not extend the protections in these situations when they involve municipalities or the municipal development organizations discussed below.

Recovery Procedure

Notice to Responsible Parties. The bill establishes a procedure performing parties must follow when seeking recovery costs. These parties can be people, firms, and corporations that investigate and remediate a property. They do not have to be the property's owner. The bill requires them to notify all potentially responsible parties about their plans to investigate and remediate a property at least 120 days before starting these activities. These eligible parties must provide this notice before they can file for recovery in Superior Court. The bill bans them from suing if they fail to notify the potentially responsible parties.

In notifying potentially responsible parties, the eligible party must:

1. identify the property and its relationship to the potential responsible party,

2. how the eligible party will investigate and cleanup the contamination and the estimated costs, and

3. when it intends to start these activities.

The party must send the notice by certified mail, return receipt requested to each potentially responsible party at its last known address on file with the Secretary of the State or its agent for service of

process. If that party is no longer on file with the secretary, the eligible party must send the notice to other specified addresses, depending on how each potentially responsible party organized itself. If the party is a corporation, the notice must go to its president's last known address; if it is a partnership, to each partner's last-known address; and if it is an individual, to his or her last known residential address.

The party must also send a copy of the notice to the Attorney General and the Environmental Protection commissioner. It must also notify any other potentially responsible parties it learns of after sending the initial notices within 45 days after learning about them.

Responsible Party's Response. A potentially responsible party must respond to the performing party's notice within 90 days after receiving it. In doing so, it must indicate it intends to negotiate with the performing party regarding its share of the investigation and remediation costs. The potentially responsible party is liable for recovery costs if it fails to respond to the notice or pay according to a pro rata share. It cannot challenge if a cost item is necessary and reasonable or contest a reimbursement claim. It is also liable for any damages the performing party suffers, including those resulting from the loss of business opportunities.

Lastly, if the performing party wins in court, the responsible party must pay its attorneys fees, if the court awards them, and court costs. The bill authorizes the Superior Court to order the responsible party to pay its pro rata share.

Deadline for Seeking Recovery. The bill allows parties to seek recovery for the reasonable costs they expect to incur for investigating and remediating contamination. But it imposes deadlines by which they must start this action. A party must start the action within:

1. six years after notifying potential responsible parties that it intends to seek recovery or

2. three year remediating the property, not including any long-

term groundwater monitoring.

Application of Other Laws. The bill's recovery provisions do not supersede other laws. Responsible parties may use any defenses the law provides against any action, including recovery. But they also remain liable to third parties for property damage or personal injury under common law.

§ 6 — RECOVERING DAMAGES UNDER THE TRANSFER ACT

The bill imposes deadlines for starting a recovery action under the Transfer Act, which requires the party transferring a potentially contaminated property (the transferor) to do so only after it assess the property's environmental condition and, if contaminated, identifies who will clean it up. The transferor must do this by filing one of four forms depending on the property's environmental status. The law holds the transferor strictly liable for all cleanup costs and direct and indirect damages if he or she fails to comply with the Transfer Act's requirements. It also entitles the party acquiring the property (the transferee) to recover damages from the owner.

The bill requires a transferee seeking recovery for damages under the act to begin doing so within six years after the later of:

1. the due date for filing the appropriate Transfer Act form or

2. the date the transferee filed the form.

The bill appears to apply these deadlines to any action recovery for investigation and remediation costs except those that are closed and no longer appealable on or before October 1, 2009.

§ 7 — MUNICIPAL INSPECTION POWERS

Inspecting Agencies

Current law extends limited liability to municipalities (or licensed environmental professionals acting on their behalf) to enter and inspect contaminated property. The bill extends this authorization to municipal development agencies, a nonprofit economic development

corporations, or non stock or limited liability companies acting on a municipality's behalf. A nonprofit economic development corporation may enter and inspect property if it was formed to promote the municipality's common good, general welfare, and economic development and receives funds or in-kind services from the municipality. A non stock corporation or LLC may do so if it had been established by the municipality or one of its municipal development organizations and operate under their control.

Ground for Appealing Municipal Entry and Inspection

The bill also changes the grounds under which an owner may appeal a municipality's decision to enter and inspect his or her property. By law, the municipality must notify the owner before it or the LEP can enter the property.

In bringing the appeal under current law, the owner must represent that he or she is diligently investigating the property in a timely manner and will full pay any delinquent property taxes. Under the bill, the owner must show that access is not necessary and prove that he or she:

1. has completed or is completing a comprehensive environmental site assessment or investigation report;

2. gave a copy of the report to the partying intending to enter the property (i.e., the municipality, a municipal development agency, or LEP) or plans to do so within 30 days after the owner received a copy of the assessment report; and

3. paid any back taxes on the property.

Liability

The bill changes the extent to which municipalities and licensed environmental professionals (LEPs) are liable for their actions when entering and inspecting a property. Under current law, a LEPs acting on a municipality's behalf may enter and inspect a property without liability to anyone except the environmental protection commissioner.

The bill allows the LEP to enter and inspect the property without any liability.

The bill broadens a municipality's protection from liability when entering and inspecting property. Under current law, the municipality is not liable for any preexisting contamination or pollution unless it causes this condition to spread by negligently or recklessly inspecting the property. But this protection is limited to orders the environmental protection commissioner issues to address a potential pollution source.

The bill extends the protection to more types of corrective orders addressing preexisting conditions. It includes orders to address potential pollution sources, orders to a property's owner to correct actual or potential pollution sources when another party is responsible for the pollution, recovery actions initiated by the commissioner and other parties. The municipality is not liable to the property owner or third party for preexisting conditions under these orders if it:

1. did not cause or contribute to the contamination or pollution,

2. did not negligently or recklessly exacerbate it, and

3. complies by reporting pollution on or emanating from the property to the commissioner as the law requires.

If the municipality negligently or recklessly caused the contamination to spread, it must address only the contamination resulting from its activities.

§ 3 — MUNICIPALLY ACQUIRED AND CONVEYED BROWNFIELDS

Municipal Development Organizations

The bill expands the range of municipal development organizations (MDOs) that may acquire, cleanup, and convey brownfields. Current law authorizes only municipalities or their economic development agencies to do these things. The bill extends the authorization to redevelopment and municipal development agencies, nonprofit economic development corporations, and non stock or LLCs.

Nonprofit and for profit organizations may acquire and convey property on the municipality's behalf if they meet specified criteria. A nonprofit economic development corporation can act on a municipality's behalf if it was formed to promote the municipality's common good, general welfare, and economic development and receives funds or in-kind services from the municipality. A for profit organization may do the same if it was established by the municipality or its economic development, redevelopment, or municipal development agencies and operates under their control.

As discussed below, parties acquiring brownfields from MDOs are exempted from the Transfer Act and protected from liability.

§ 2 — Transfer Act Exemptions

The bill broadens the circumstances under which municipalities are exempt from the Transfer Act when acquiring and conveying brownfields. Current law exempts them when acquiring a property by foreclosing on a tax lien or through a tax warrant sale. It also exempts municipalities when they convey this property to another party who will remediate and redevelop it under the DECD's Brownfield Pilot Program.

The bill extends the Transfer Act exemption to property a municipality acquires and conveys property it acquired by eminent domain or through any foreclosure action. The eminent domain exemption applies only to property they acquire under specified development statutes or a legislative body resolution authorizing the taking of a specific brownfield site. The municipal development statutes authorize municipalities to take property, regardless of its condition, to implement a development plan.

By exempting property taken under the municipal development statutes, the bill extends the municipal Transfer Act exemptions to municipal development agencies and nonprofit development corporations, non stock corporations, and LLCs acting on their behalf.

The municipality is also exempted from the act when it conveys property if two conditions are met. First, the municipality or the party acquiring the property began remediating the property under DEP's voluntary remediation program before the municipality conveyed it. Second, the acquiring party is neither responsible for the contamination nor affiliated with the party that is. The exemption applies to when municipal development organizations transfer property among themselves.

§ 3 — Liability Protections for Developers Acquiring Remediated Property

The bill also expands the circumstances under which developers are protected from liability when acquiring a brownfield remediated under DECD's Brownfield Remediation Pilot Program, under which selected municipalities receives funds and technical assistance to investigate and remediate contaminated property according to DEP standards. Current law protects developers from liability when acquiring property from the municipality or its economic development agency. The bill extends the protection to developers when they acquire the property from a municipal development organization.

In doing so, the bill extends an additional benefit to these developers. Under current law, DEP must enter into a covenant not to sue with a developer who acquires a property from the municipality or its economic development agency after remediating it according to DEP standards. DEP must enter into the covenant without charging the statutory fee, which equals 3% of the property's value. The covenant protects the developer from future DEP orders to investigate and remediate pollution on the site. The bill extends this benefit under the same conditions to developers who acquire remediated property from municipal development organizations.

The bill also extends a benefit to municipal development organizations that is currently limited to the municipalities and their economic development agencies. It allows them to keep 20% of the sale proceeds for economic development capital improvements. (As

under current law, the organizations must remit the remaining 80% to DECD's Brownfield Office for deposit in the General Fund.)

§ 4 — Innocent Third Party Status

The bill broadens the circumstances under which municipalities qualify as innocent third parties, a designation that protects them under current law from liability to DEP for cleanup costs if the property was already contaminated when they acquired it or subsequently became contaminated due to an act of God or the actions of a third party. Current law limits this designation to municipalities and municipal economic development agencies that receive funds under DECD Brownfield Remediation Pilot Program for investigating and remediating contamination. The designation applies only if the parties did not cause, contribute to, or exacerbate the contamination and comply with DEP's reporting requirements.

The bill broadens the circumstances by extending it to municipalities, economic development agencies, and municipal development organizations that receive grants under any DECD program to investigate and remediate contaminated property. It also applies the designation if these entities did not establish, as well as cause, contribute to, or exacerbate the contamination and comply with DEP's reporting requirements.

The bill also specifies the circumstances under which the entities are liable for cleanup costs. It does so by:

1. specifying that the innocent third status applies only to conditions that existed or exist on the property when an entity acquired or took control of the property as long as they did not establish, cause, contribute to, or exacerbate the pollution and

2. requiring the entity to address any contamination they exacerbated by negligent or reckless action.

§ 8 — ABANDONED BROWNFIELD CLEANUP PROGRAM

Benefit

The bill establishes a program protecting developers from liability for investigating and remediating pollution that emanated from a property before they acquired it. The DECD commissioner must establish the program in consultation with the DEP commissioner.

Application Requirements

A developer must apply to economic and community development commissioner for the program's benefit on forms she provides. The commissioner has up to 60 days after receiving the application to determine if it is complete and notify the developer. The commissioner has 90 days after determining the application is complete to decide whether to award the program's benefit.

The bill specifies that the commissioner's approval does not disqualify the developer or the property from funding under other brownfield remediation programs administered by the DEP, Connecticut Development Authority, or DECD.

Eligible Criteria

The property and the developer must meet the bill's criteria to qualify for the program. The property must have been unused or significantly underused since October 1, 1999 and its redevelopment must benefit the municipality and the region.

The property must also meet the statutory definition of brownfield. Under that definition, a property is a brownfield if it has not been redeveloped or reused because it is contaminated or potentially contaminated. The contamination could be in the groundwater, soil, or buildings. It must be investigated, assessed, and cleaned up while the property is being restored, redeveloped, or reused or before these activities can occur. Lastly, the property must meet any other criteria the economic and community development commissioner establishes.

The developer qualifies for the program if the person or organization responsible for polluting the property cannot be identified, no longer exists, or cannot remediate the property. In

addition, the developer qualifies if he or she:

1. intends to acquire title to the property so that it can be redeveloped;

2. did not establish or create a facility or condition at or on the property that could reasonably be expect to pollute water;

3. is unaffiliated with the party responsible for the pollution or its source through any direct or indirect familial or contractual, corporate, of financial relationship other than the one through which the property is conveyed or financed; and

4. is not required to remediate the pollution on or emanating from the property under a law, order, DEP consent order, or stipulated judgment to under no DEP or court order.

The commissioner may approve the developer for the program if he or she meets the above criteria and takes title to the property. If she does, the developer must:

1. remediate the property under DEP's voluntary remediation program,

2. investigate the property according to current standards and guidelines and remediate it according to state standards, and

3. eliminating any pollution that emanated or migrated from the property before the party took title.

§ 1 — REDEVELOPING MILLIS IN FLOODPLAINS

The bill makes it easier for state agencies to develop or allow other to develop contaminated mill sits in floodplains. Under current law, an agency cannot implement or assist any type of project in a floodplain without first certifying to the DEP commissioner that the project meets certain criteria and that the agency will take steps to mitigate or prevent increased flooding. Among other things, the agency must certify that the project promotes long-term nonintensive uses and does

not encourage new development in the floodplain by constructing or extending utilities needed to support that development.

The bill exempts the agency from having to certify this condition if it can show that:

1. the mill will be remediated according to DEP standards,
2. the project site falls within the site of the mill's historic uses,
3. all critical activities (e.g., residential dwellings) are above the 500-year flood elevation, and
4. the project complies with the National Flood Insurance Program.

If the agency cannot show that the project meets these criteria, the agency may, as under current law apply to the commissioner for an exemption from the certification requirement.

BACKGROUND

Related Bills

SB 271 (as amended by Senate "A" and House "A") makes identical changes to the floodplain law.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute
Yea 20 Nay 0 (03/12/2009)

Planning and Development Committee

Joint Favorable
Yea 17 Nay 0 (04/13/2009)

Appropriations Committee

Joint Favorable Substitute
Yea 51 Nay 0 (04/27/2009)

Judiciary Committee

Joint Favorable
Yea 27 Nay 0 (05/29/2009)